



CITY OF DURHAM | DURHAM COUNTY  
NORTH CAROLINA



**Date:** July 25, 2013

**To:** Thomas J. Bonfield, City Manager  
**Through:** Keith Chadwell, Deputy City Manager  
**From:** Steven L. Medlin, AICP, Planning Director  
**Subject:** 714 and 716 Shepherd Street

**Summary.** Mr. John Hunter, owner of 714 Shepherd Street, has submitted a request to appear before the City Council on July 25, 2013 regarding allegations of historic district violations on his property and the adjacent property located in the Morehead Hill Local Historic District.

**Background.** On April 26, 2013 Mr. Hunter called the Planning Department to inquire about what type of approval would be required to construct a rear screened porch in the Morehead Hill Historic District. He reported that, years ago, the owner of 716 Shepherd Street had constructed a screened porch on the rear of that structure without obtaining a Certificate of Appropriateness (COA). After a phone conversation with Mr. Hunter, Ms. Lisa Miller, Senior Planner for historic preservation, reiterated via email that staff was researching whether the property in question had received a COA for the reported work at any point in time. She explained that if no COA was obtained that the owner would be required to seek a retroactive COA now, just as Mr. Hunter was required to do in 2002 after installing vinyl siding without a COA on his property located at 714 Shepherd Street.

After verifying that no COA existed on record for 716 Shepherd Street, a letter was sent to the property owner on April 30, 2013 asking for either documentation of a COA approval or submittal of an application for a retroactive COA for the addition of the rear screened porch. Although a building permit was issued for this work, on January 11, 2005, it pre-dated the current process that verifies COAs for building permit applications in historic districts.

Mr. Hunter was informed of these facts the same day via email, and he subsequently requested a copy of the letter and questioned why this property could obtain an administrative approval as opposed to other work. On May 2, 2013 Ms. Miller explained via email that, since the time of his own violation in 2001-2002, many changes had been made to the preservation program to simplify and streamline the process for applicants. Some of those changes included allowing rear decks, fences, and mechanical equipment to all be reviewed and approved administratively.

Planning staff checked with the Inspections Department concerning the legal status of the building permit and were informed that the permit was lawfully issued on October 13, 2004 (and amended on January 11, 2005) and that a certificate of compliance/occupancy (C.O.) was issued on July 15, 2009 after all field inspections were performed and approved. Once the C.O. was issued there is no legal way under the state building code to invalidate the building permit as it has been closed out.

On May 10, 2013 the property owner of 716 Shepherd Street submitted a retroactive administrative COA application for the rear screened porch constructed in 2005. Nearly three weeks later, on May 30, 2013, that property owner submitted an email complaint about work Mr. Hunter was currently undertaking at the adjacent 714 Shepherd Street. Zoning enforcement staff visited the site the following day to try and speak with someone about the work, but no one was present and left a business card asking that the department be contacted. The following week another zoning enforcement officer visited the site and photographed the structure, which had portions of the second story facade covered in what appeared to be new foam insulation board.



Case file research showed that a retroactive COA (case DHPC02-01) for the installation of vinyl siding was issued by the Historic Preservation Commission for this site on January 8, 2002, followed by two other approvals for associated improvements to the structure (DHPC02-08, approved February 5, 2002 and DHPC02-09, approved March 5, 2002). Vinyl siding is not a material in keeping with the historic character of this district according to the criteria in the adopted Morehead Hill preservation plan. COAs expire one year from the date of issuance unless a building permit is secured before the expiration. If a building permit remains active, or if work not requiring a permit is never ceased or paused, then the COA remains valid for the duration of the work. Any time a development approval such as a COA expires, including due to construction inactivity, a new application is required to renew the approval. Work without a valid COA is a violation of the Unified Development Ordinance. Based on the length of time

(over a decade), and the fact that the structure had still not been fully repaired in accordance with the COA, a Notice of Violation (NOV) was issued to the property owner on June 11, 2013. Since a building permit is not required for this type of work the only way to determine continued validity would be evidence of continued work on the structure, which seemed questionable based on the modest amount of siding replaced over the past decade.

Upon receiving the NOV, Mr. Hunter contacted the Planning Department and stated that he had already obtained a COA for the work he was currently doing. Ms. Miller explained the validity period for a COA, and that when a COA expires without fully executing the work, as he did in 2003, a new COA is required. She asked for a description of the current scope of work in order to assist Mr. Hunter in obtaining an expeditious approval. Mr. Hunter claims that this current work is not new, but that he has been continuously executing the previously approved improvements since 2001. After receiving this statement from Mr. Hunter and reviewing the case documentation, the Planning Director, Steven Medlin, notified the property owner that the NOV was being rescinded based on the owner's statement of constant work and the lack of documentation to show that work was not on-going, and apologized for any inconvenience.

Meanwhile, the retroactive COA (case COA1300063) for the rear screened porch at 716 Shepherd Street was approved on June 12, 2013, bringing that property into compliance.

Additionally, Mr. Hunter has indicated that he had a telephone conversation with a member of the Planning staff in which he believes that the staff person acted inappropriately. Following a telephone conversation with Mr. Hunter, in which he provided his perspective to me, I interviewed the employee involved and other employees who heard the telephone conversation in question. It is my belief that an intense conversation occurred. While I believe the conversation may have been intense and animated from both sides I do not believe anything inappropriate was shared by staff during the course of the conversation and only that a degree of frustration was exhibited. We as staff always strive to present ourselves in a professional manner and avoid letting emotions taint how we perform our roles. Based on the scope of the event and my subsequent actions I believe that this matter is closed.

**Issues.** Through various emails Mr. Hunter has conveyed several concerns. He claims that the building permit for the rear screened porch at 716 Shepherd Street was invalid because no COA was obtained for the work and that the Morehead Hill Preservation Plan was therefore not being implemented. The Plan includes the following policy on page 37:

Require the issuance of a Certificate of Appropriateness prior to the issuance of building permits for any exterior building or site modification.

In addition, paragraph 3.17.1B of the Unified Development Ordinance states:

The City or the County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure within or on an historic district or historic landmark for which a certificate of appropriateness has not been approved. A certificate of appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this section shall be invalid. A certificate of appropriateness may be issued by the HPC subject to reasonable conditions necessary to carry out the purposes of this Ordinance.

COAs have always been required prior to building permit issuance. However, prior to 2007 there was no coordinated mechanism to alert Planning staff that a permit had been applied for, or issued, in a local historic district, and verify whether or not a COA had been obtained. After the implementation of the Land Development Office (LDO) system in 2007 Planning and Inspections department staff were able to develop a systematic way to flag properties before building permit issuance to verify the existence of and conformance with all necessary development approvals, including historic district COA requirements. In 2011 the flagging system was further refined and now all permits in local historic districts are reviewed by Planning staff. Failure to obtain a COA before building permit issuance results in a Stop Work Order issued by the Inspections Department to allow the applicant to seek the proper approval. Work that otherwise conformed to the building code, and received a Certificate of Compliance at the conclusion of construction, is not considered to have been built without a valid building permit because a COA was not obtained. The Inspections Department does not retroactively revoke building permits for work completed without a COA, but rather these situations are treated as a violation of the ordinance and owners are required to apply for a retroactive COA to remedy the violation. If the work, though compliant with building code requirements, does not meet the review criteria from the preservation plan then modifications to the work are required.

Mr. Hunter also shared concerns that different standards were being applied to different properties. Since its inception the Historic Preservation Commission has identified in its adopted Rules of Procedure what level of review and approval is required for different types of work. Some work is considered routine maintenance and does not require a COA. Examples of maintenance items include replacing small quantities of siding or trim with materials to match the original exactly, repointing brickwork, and re-glazing windows. Other work is considered to be so minor and routine that, when executed in conformance with the Plan's review criteria, it can be approved administratively by Planning Department staff. That authority is specifically delegated by the Commission to staff in the Rules. For many years, work considered administrative was very limited, and most applications, even for seemingly minor improvements or alterations, were required to be heard by the Commission. In 2010, and again in 2012, the Commission revised the Rules to more specifically describe varying scopes of work and delegate more items to staff for administrative approval. These changes stemmed from a desire to simplify and streamline the approval process for COA applicants. This tiered approach to COA approvals classified by scope of work can be interpreted as having different standards for different situations, but it is by no means arbitrary, and was publicly vetted at Commission meetings.

Lastly, the Planning Department has received another complaint about the work now in progress at Mr. Hunter's 714 Shepherd Street property on June 26th. That complainant refuted Mr. Hunter's assertion that work has been continuously underway on the structure since 2001. However, at this time staff has not been able to establish any creditable evidence regarding this claim and will continue to monitor the situation.

## **Attachments**

**Attachment 1**, Email Correspondence for 716 Shepherd Street, dated April 26-May 2, 2013

**Attachments 2**, Building Permits for 716 Shepherd Street, issued October 13, 2004 and January 11, 2005  
**Attachment 3**, Building Permits for 716 Shepherd Street, issued January 11, 2005  
**Attachment 4**, Karen Swope, CZO Letter, dated April 30, 2013  
**Attachment 5** Email Correspondence for 716 Shepherd Street, dated May 6, 2013  
**Attachment 6**, Certificate of Appropriateness for 716 Shepherd Street (COA1300063)  
**Attachment 7**, Excerpt from Durham Zoning Ordinance, Section 5.6.6.8, [COA] Time Limits  
**Attachment 8**, Email Correspondence for 714 Shepherd Street, dated June 13-24, 2013  
**Attachment 9**, Case History for 714 Shepherd Street  
**Attachment 10**, Timeline